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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: December 18, 2017)	Case No.: PSH-17-0089
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Issued: April 2, 2018

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to retain an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor and possessed a security clearance. In April 2017, the individual tested above the allowable breath alcohol limit (0.20g/210l) while on duty. On June 1, 2017, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual. Later, the LSO referred the individual to a DOE contractor psychologist (DOE Psychologist) for a forensic psychological examination.

On October 24, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to retain an access authorization and that the individual’s access authorization was suspended. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline G (Alcohol Consumption) of the Adjudicative Guidelines.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. The individual entered two exhibits (Exhibits A-B) into the record. At the hearing, the individual testified on his own behalf and also presented the testimony of his spouse (Spouse), a neighbor (Neighbor), a long-time friend (Friend), his supervisor (Supervisor) and his counselor (Counselor). The DOE submitted 11 exhibits (Exhibits 1-11) into the record and presented the testimony of the DOE Psychologist. The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for an access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. In citing Guideline G, the LSO referenced a report issued by the DOE Psychologist (Report) opining that the individual suffered from Alcohol Use Disorder and that he had not demonstrated adequate rehabilitation or reformation. Also cited were statements regarding the individual’s alcohol use that the individual made during the PSI.

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

I have reviewed the exhibits and find that the LSO had sufficient grounds to invoke Guideline G in this case. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicatory Guideline G at ¶ 21.

IV. Findings of Facts

The individual does not dispute the factual allegations in the Notification Letter which are detailed below and are adopted as my findings of facts. Tr. at 44, 56.

On April 10, 2017, the individual was subjected to a random alcohol breath test at his workplace. Ex. 6; Ex. 7; Ex. 8 at 12. The test revealed the presence of alcohol on the individual's breath (0.24g/210l) in excess of the limit (0.20g/210l) allowed while working at the DOE facility. Ex. 8 at 12-13. As a result, the individual was suspended for five days. Ex. 6 at 3.

On June 1, 2017, the LSO conducted a PSI with the individual. Ex. 10. During the PSI, the individual admitted that the day prior to his positive alcohol breath test he had consumed 10 to 15 drinks of Gin and Tonic and was experiencing a "hangover" when he reported to work. Ex. 10 at 10-11, 21. The individual also reported that during the period October 2016 to April 2017 he would customarily consume 8 to 10 drinks of Gin and Tonic two times a week and consume 2 to 4 Gin and Tonic drinks once a week. Ex. 10 at 31-32. His consumption of this amount of alcohol would result in the individual becoming intoxicated approximately 90 percent of the time. Ex. 10 at 32.

The individual also reported that he had attended a six-week intensive outpatient treatment program (IOP) beginning in April 2017. Ex. 10 at 15-18, 39-40. However, the individual disclosed that he had used alcohol once in May 2017 while participating in the treatment program.³ Ex. 10 at 18, 39-40.

After examining the individual, the DOE Psychologist issued a report (Report) detailing his findings. Ex. 8. The DOE Psychologist diagnosed the individual as suffering from Alcohol Use Disorder, Moderate to Severe, under criteria of the *Diagnostic and Statistical Manual – Fifth Edition*. Ex. 8 at 8. He opined that, as of the date of his evaluation, the individual had not demonstrated sufficient evidence of rehabilitation or reformation. Ex. 8 at 8. In the Report, the DOE Psychologist asserted that in order for the individual to demonstrate sufficient evidence of rehabilitation or reformation, the individual must abstain from alcohol for one year and should continue participating in the aftercare portion of his IOP. The DOE Psychologist also recommended that the individual attend two Alcoholics Anonymous (AA) meetings a week along with establishing an active relationship with an AA sponsor. Ex. 8 at 8.

V. Analysis

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's

³ The individual stated during the PSI that, while he believed that he had been advised by an IOP counselor to abstain from alcohol, he was also advised by another treatment counselor that he could resume consuming alcohol "in moderation." Ex. 10 at 18.

eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. The Guideline G security concerns center on the individual's reporting to work with an elevated breath alcohol test and the DOE Psychologist's determination that the individual suffers from an alcohol use disorder. The individual has presented evidence to try to establish that he is now rehabilitated and reformed from his alcohol problem. After due deliberation, I find that the individual's security clearance should now be restored. Specifically, I find that restoring the individual's security clearance would not endanger the common defense and security, and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The relevant evidence and my specific findings in support of this decision are discussed below.

The Spouse testified that she has been married to the individual for 14 years. Tr. at 10. The Spouse was diagnosed with a serious illness in 2014. Tr. at 11. Afterwards, the individual's alcohol consumption gradually increased during the course of her illness. Tr. at 12. Additionally, the individual's mother suffered a major health concern during this time. Tr. at 13. Recently, the Spouse has been informed that her illness has reoccurred. Tr. at 13. Shortly after the individual had tested positive for alcohol at work, he entered an IOP in April 2017. The Spouse further testified that the individual's initial attitude was "not very good" because the individual is a person who does not like to be told what to do. Tr. at 15. However, the individual shortly began to embrace the program and he would describe to her the topics discussed at his IOP meetings. Tr. at 16. The Spouse would attend every "family night" meeting she could to show support. Tr. at 16.

In May 2017, the individual and the Spouse went away to ride their "four-wheeler" vehicle and to sightsee. Tr. at 16. When they came back to the resort where they were staying, the individual "had a few drinks" but did not become intoxicated. Tr. at 16-17. The individual informed his counselors at the IOP that he had consumed alcohol and the counselors recommended that the individual repeat the IOP. Tr. at 17. The individual admitted to his Spouse that he should not have consumed any alcohol during the program. Tr. at 17-18.

On restarting the IOP, the individual was initially unhappy but within the first week of the IOP he began to embrace the program. Tr. at 18. In the Spouse's opinion, the individual's participation in the IOP improved. Tr. at 18. The individual had increased compassion for others in the IOP. Tr. at 19. The Spouse testified that the individual has also entered individual counseling with the Counselor. Tr. at 20. In her opinion, the individual has enjoyed his individual counseling sessions and has been able to discuss issues in his life with the Counselor. Tr. at 20. In November and December 2017, the individual began to attend AA meetings and the Spouse has attended several of the meetings with him. Tr. at 21. The individual's opportunities to attend AA meetings have been lessened because his mother has suffered a serious injury and the individual and his Spouse need to care for her. Additionally, the Spouse's own need for additional medical treatment has reduced the individual's opportunities to attend AA. Tr. at 22.

Since the individual's consumption of alcohol in May 2017, the Spouse has not observed the individual consume any alcohol. Tr. at 23-24. The individual and the spouse do not keep alcohol in their house. Tr. at 25. The individual's friends are very supportive of the individual's decision not to consume alcohol. Tr. at 26. The Spouse testified that the individual has indicated to her his intention not to consume alcohol in the future. Tr. at 27. She believes that the individual now has the skill set and support group he could turn to in times of stress. Tr. at 28. She states that, despite the individual's recent increased stress with regard to her medical issue and the individual's

mother's serious illnesses, the individual has been coping well. Tr. at 28. Since all of the recent events, the Spouse believes that the individual is easier to get along with. Tr. at 28.

The individual testified that he alone is responsible for the suspension of his security clearance. Tr. at 54. When he tested positive for the presence of alcohol at work he was embarrassed to have to tell his Spouse. Tr. at 57. The individual confirmed the fact that, after starting a six-week IOP program in April 2017, he made the decision to consume alcohol on one occasion at a resort. Tr. at 59. After voluntarily revealing this fact to IOP clinicians, the clinicians emphasized the importance of maintaining sobriety and recommended that he repeat the IOP. Tr. at 59.

When he began to repeat the IOP again he was somewhat angry at himself for "being so dumb to even try it again." Tr. at 60. He believes that he learned a lesson from this experience of having to repeat the IOP because of his decision to consume alcohol at the resort. Tr. at 60. He believes that there is "no amount of alcohol that's ok to consume" and that he needs to stay away from it. Tr. at 60. His intention is to never consume alcohol again. Tr. at 69. Should the individual encounter significant stress, he believes that he has an excellent support system – his family, his Counselor and the individuals he has gotten to know through AA. Tr. at 70.

The individual testified that the IOP involved attendance from three to four hours during the week. Tr. at 59. The IOP focuses on helping participants learn different ways of coping with addiction and how to cope with stress. Tr. 61-62. After the IOP is completed, participants can participate in the "aftercare" portion of the program. Tr. at 63. The individual has regularly attended the aftercare meetings. Attending these meetings has made him thankful that he received treatment and that his problem with alcohol did not reach the level of severity experienced by other participants at the meeting. Tr. at 63. The individual has also begun to attend AA meetings and has a sponsor. Tr. at 66. The individual has also been studying the AA "Big Book." Tr. at 67. However, with the recurrence of his Spouse's illness, he has not attended as many meetings as he would like. Tr. at 67-68.

The individual also testified that he has also been meeting with the Counselor since December 2017, a couple of times a month for individual counseling. Tr. at 64. During these sessions, the individual talks to the Counselor about issues in his life and how best to deal with them; the sessions do not focus exclusively on his alcohol problem. Tr. at 64. The individual believes that these sessions have helped him go "down the right path most of the time." Tr. at 65. He trusts his Counselor and relies on his advice. Tr. at 65.

The Neighbor and Friend both confirmed that the individual has not consumed alcohol since May 2017. Tr. at 43-44, 50, 103, 107. Both confirmed that the individual blamed only himself with regard to the problem his alcohol consumption caused with his security clearance. Tr. at 45, 105. The Friend confirmed that, since the individual stopped consuming alcohol, he has changed in a positive way. Tr. at 105. The Neighbor testified that, since the workplace incident when the individual tested positive for alcohol, he has on occasion offered a beer to the individual but the individual always refuses. Tr. at 45-46. Both the Neighbor and Friend believe that the individual will not consume alcohol in the future. Tr. at 45, 107. The Supervisor testified that the individual was a good employee and that he could rely on the individual to get any work assignment completed. Tr. at 94. In the Supervisor's opinion, the individual is honest, reliable and trustworthy. Tr. at 95-96.

The Counselor testified that he met the individual in April 2017 as part of his duties in operating the aftercare program of the IOP. Tr. at 113. The Counselor did not have any concerns regarding the individual's progress in the IOP until the individual voluntarily admitted to having consumed alcohol while at a resort. Tr. at 113-15. Upon discovering that fact, another IOP clinician spoke to the individual to discuss the best treatment options. Tr. at 115-16. The IOP clinician determined that the individual should repeat the IOP. Tr. at 116. The individual has been very successful in repeating the IOP. Tr. at 116, 118. After completing the IOP, the individual has continued his treatment by participating in aftercare. Tr. at 119-20.

In addition, the Counselor has been meeting with the individual for individual counseling. Tr. at 129. He has had five sessions with the individual, and in their sessions they have been dealing with the stressors the individual has been facing in his life and any stressors that may arise in the future. Tr. at 130-31. The Counselor opined that the individual's participation in the IOP and in individual counseling has been satisfactory and confirmed that the individual has satisfactorily completed the IOP, Tr. at 131. Overall, the Counselor believes that the individual has a favorable prognosis and that his risk for relapse from his Alcohol Use disorder is low for the foreseeable future. Tr. at 127.

The DOE Psychologist, after listening to all of the hearing testimony, concluded that the individual's prognosis was good as long as he continues his abstinence and he continues to rely on his support system. Tr. at 150. The DOE Psychologist stated that, while the individual's current abstinence and treatment program is three months shorter than the one year duration he recommended in the Report, he does not believe that this would make a significant difference in the individual's prognosis. Tr. at 152. In sum, the DOE Psychologist found that the individual has demonstrated sufficient evidence by which the DOE Psychologist could find that the individual is reformed from his Alcohol Use Disorder. Tr. at 152-53.

I find the individual's testimony convincing regarding the changes he has made in his life regarding alcohol. Despite the fact that the individual may face increased stress arising from his Spouse's health concerns, the individual has learned techniques to face this challenge and has a significant support system he can rely upon. The individual has presented substantial evidence and testimony confirming his current abstinence from alcohol. *See* Ex. A (nine breath alcohol tests beginning in April 2017 indicating negative for the presence of alcohol). I also found the testimony of the Counselor and the DOE Psychologists to be well supported regarding their assessment of the individual as having a low risk of relapse.

The individual has presented sufficient evidence upon which I can find that two Guideline G mitigating factors are applicable: Guideline G ¶ 23(b) - the individual has acknowledged his pattern of maladaptive alcohol use, provided evidence of actions taken to overcome this problem and has established a pattern of abstinence; and Guideline G ¶ 23(d) - the individual has successfully completed a treatment program along with any required aftercare and has established a pattern of abstinence in accordance with treatment recommendations. After evaluating all of the evidence before me, I find that the individual has resolved the Guideline G security concerns raised by the Notification Letter.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. After considering

all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth sufficient evidence to resolve the security concerns associated with those guidelines. I therefore find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the DOE should restore the individual's access authorization.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals